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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Simon HAKIEL, et al.	:	Confirmation Number: 9639
	:	
Application No.: 10/667,581	:	Group Art Unit: 2143
	:	
Filed: September 22, 2003	:	Examiner: K. Belani
	:	
For: A METHOD OF DISPLAYING EVENTS	:	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed July 25, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1, 4, and 6-12.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on September 22, 2003, at Reel 014526, Frame 0449.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1, 4, and 6-12 are pending and four-times rejected in this Application. Claims 2-3, 5, and 13 have been cancelled. It is from the multiple rejections of claims 1, 4, and 6-12 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Fourth and Final Office Action dated April 25, 2008 (hereinafter the Fourth Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figures 3, 4A-4B and also to independent claim 1, a method of filtering one or more events 430 associated with one or more computer environments 435 for display in a performance monitoring system (lines 1-8 of paragraph [0026]). Each of the one or more events 430 is generated when a threshold associated with a first parameter is met (lines 8-12 of paragraph [0026]) is disclosed. In 310, a filter representing a set of the one or more computer environments 435 is received (lines 8-9 of paragraph [0024]; lines 3-5 of paragraph [0026]). Also in 310, in response to the receiving step, the one or more events 430 using are filtered using the filter and are displayed (lines 9-10 of paragraph [0024]; lines 5-8 of paragraph [0026]). A link is displayed, and the link is from a first set of information related to the filtered one or more events 430 being displayed and for accessing a second set of information related to the first set of information (lines 1-13 of paragraph [0035]). The filter is received from, and the one or more filtered events 430 are displayed on, a single display window 400 (lines 10-13 of paragraph [0024]).

Referring to Figures 3, 4A-4B and also to independent claim 12, an apparatus for filtering one or more events 430 associated with one or more computer environments 435 for display in a performance monitoring system is disclosed (lines 1-8 of paragraph [0026]). Each of the one or more events 430 is generated when a threshold associated with a first parameter is met (lines 8-12 of paragraph [0026]). In 310, a filter representing a set of the one or more computer environments 435 is received by receiving means (lines 8-9 of paragraph [0024]; lines 3-5 of paragraph [0026]). Also in 310, in response to the receiving step, the one or more events 430 using are filtered using the filter and filter means, and the results are displayed using display means (lines 9-10 of paragraph [0024]; lines 5-8 of paragraph [0026]). A link is displayed using link displaying means, and the link is from a first set of information related to the filtered one or more events 430 being displayed and for accessing a second set of information related to the first set of information (lines 1-13 of paragraph [0035]). The filter is received from, and the one or more filtered events 430 are displayed on, a single display window 400 (lines 10-13 of paragraph [0024]).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 4, and 6-12 were rejected under 35 U.S.C. § 103 for obviousness based upon Wilson et al., U.S. Patent No. 6,714,976 (hereinafter Wilson), in view of Dittmer et al., U.S. Patent No. 6,473,407 (hereinafter Dittmer), and Black et al., U.S. Patent No. 7,143,153 (hereinafter Black).

VII. ARGUMENT

THE REJECTION OF CLAIMS 1, 4, AND 6-12 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON WILSON IN VIEW OF BLACK

For convenience of the Honorable Board in addressing the rejections, claims 4 and 6-12 stand or fall together with independent claim 1.

"In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness."¹ The legal conclusion of obviousness is based on underlying findings of fact including the scope and content of the prior art, the differences between the prior art and the claims at issue, and the level of ordinary skill in the pertinent arts.² "Secondary considerations such as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."³ Therefore, to properly make a finding of obviousness, a comparison between the applied prior art and the claims at issue must be made to ascertain the differences between what is being claimed and the teachings of the applied prior art. Moreover, before making a proper comparison between the claimed invention and the prior art, the language of the claims must first be properly construed.⁴ This burden has not been met.

¹ In re Rijckaert, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992)).

² KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1734 (2007).

³ Id. (quoting Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)).

⁴ See In re Paulsen, 30 F.3d 1475, 1479 (Fed. Cir. 1994); see also Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, . . . will normally control the remainder of the decisional process"); see Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

Regarding the claimed "receiving a filter representing a set of the one or more computer environments," the Examiner asserted the following in the paragraph spanning pages 4 and 5 of the Third Office Action:

Fig. 1, EM Console block 42 that receives event triggered data from EM agents 30-40; column 6, lines 42-45 that disclose the plug-in modules for filtering and capturing the event triggered data and sending the captured data to the EM Console; Table in Fig. 11 that shows the type of data collected including system component 268 as one or more computer environments

Upon reviewing the Examiner's cited passages, Appellants are unclear as to how Wilson discloses the claimed filter representing a computer environment. Column 6, lines 42-45 of Wilson describes plug-in modules that can be used to "[configure] which events are to be monitored," yet this passage is silent as to the filter representing a computer environment. Fig. 11 of Wilson is described as a table stored in a data repository, yet absent from this passage is a teaching of a filter representing a computer environment. Thus, Wilson fails to teach the limitation for which the Examiner is relying upon Wilson to teach.

The Examiner's Response

In paragraph spanning pages 13 and 14 of the Second Office Action, the Examiner responded as follows:

Consider **claim 1**. Applicants argue that the cited paragraph at column 6, lines 42-45 is silent as to the filter representing a computer environment. The examiner has interpreted the text of the paragraph "This allows the detection code to act as plug-in modules that the user can select for configuring which events are to be monitored" to mean that the plug-in modules correspond to options processing code for a drop-down list-box of a GUI in a windows environment. When a user selects a specific plug-in module, the action is equivalent to making a selection from a drop-down list of a list-box (same as a filter); the selection resulting in monitoring the event data from one or more event agents 30-40 (shown in Fig. 1), each of which monitors events in a specific computer environment shown as environments 12-22 in Fig. 1; Fig. 3, Column 7, lines 32-35 show and disclose module 80 that can filter the traffic relevant to agent 50.

The Examiner's assertion regarding the "[w]hen a user selects a specific plug-in module" does not appear to be appropriate. Column 6, lines 42-43 describe that the detection code can "act as plug-in modules." However, the Examiner has not shown that a user actually selects a plug-in

module. As such, Wilson does not appear to teach what the Examiner is asserting Wilson teaches.

Moreover, although the monitoring agents 30-40 shown in Fig. 1 monitor performance of various components (see column 5, lines 27-55), the Examiner's analysis still fails to establish that the filter represents a set of the one or more computer environments. A teaching that event data being filtered comes from different alleged computer environments is not comparable to a teaching that the filter itself represents a set of one or more computer environments. Thus, the Examiner has failed to properly characterize the teachings of Wilson.

On page 6 of the Third Office Action, the Examiner admitted the following:

However, Wilson et al. do not explicitly disclose that in response to the receiving step, filtering the one or more events using the filter, wherein the filter is received from, and, the one or more filtered events are displayed on a single display window

To cure this deficiency the Examiner made the following assertion on page 5 of the Third Office Action:

In the same field of endeavor, Ditmer et al. disclose that in response to the receiving step, filtering the one or more events using the filter, wherein the filter is received from, and the one or more filtered events are displayed on a single display window (column 13, lines 28-39 which disclose a method for alarm management from a single workstation, including display or print lists of active alarms and define or display customized alarm filters to specify which alarms will appear in the alarm presentation).

Appellants respectfully submit that the Examiner has again failed to properly characterize the scope and content of the applied prior art. The Examiner's cited teachings of Ditmer refer to "a single workstation," which is not comparable to the single display window, as claimed. Moreover, Ditmer does not teach filtering events (which are associated with one or more

computer environments) based upon a filter representing a set of the one or more environments, as claimed. Instead, Ditmer teaches an alarm filter that specifies which alarm will appear in an alarm presentation. Thus, not only does Ditmer teach that the set of data to be filtered is different than the data claimed, the type of filter taught by Ditmer is also different than that claimed. Even if Wilson were modified in view of Ditmer, as suggested by the Examiner, the resultant combination would not teach the limitations that the Examiner is relying upon this combination to teach.

The Examiner's Response

In first full paragraph on page 14 of the Second Office Action, the Examiner initially responded as follows:

Furthermore, the applicants argue that the cited teachings of Ditmer et al. reference (U.S. Patent Publication # 6,473,407 B1) refers to "a single workstation" which is not comparable to the single display window, as claimed. The examiner begs to differ. A single workstation is certainly providing a single display window.

The Examiner analysis neglects to consider the claim limitations. Claim 1 does not simply recite a single display window in isolation. Instead, claim 1 recites that "the filter is received from, and the one or more filtered events are displayed on, a single display window." The Examiner has failed to produce any factual evidence that Ditmer teaches this entire claimed limitation for which the Examiner is relying upon the Examiner to teach.

The Examiner further asserted the following in the last full paragraph on page 14 of the Second Office Action:

The applicants also argue that Ditmer et al. reference does not teach filtering events (which are associated with one or more computer environments) based upon a filter representing a set of the one or more environments as claimed. As explained above, this element of claim 1 is taught by Wilson et al. reference (U.S. Patent Publication # 6,714,976 B1). One cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Yet, the Ditmer et al. reference also discloses the filtering of events based on alarms, which are raised when certain events cross the specified thresholds. The examiner does not agree with the applicants' assertion that the type of filter taught by Ditmer et al. is different than that claimed. As disclosed in column 13, lines 21-27 of the Ditmer et al. reference, the described Event Monitor enables monitoring of voice and data circuits that correspond to computer environments. The examiner therefore asserts that the cited references do adequately disclose all the claimed elements of claim 1.

Appellants arguments are directed to the Examiner's failure to establish a reasonable expectation of success. Filters come in all different types/sizes/configurations/uses and range in applications from computers to coffee to motor oil. The fact that two references both teach filters does not necessary lead to one having ordinary skill in the art having a reasonable expectation of success in modifying the teachings of one reference with the other reference. Appellants' position is that since the filters of the respective references have different applications and the Examiner has failed to establish factual evidence supporting a reasonable expectation of success, the Examiner has not establish a prima facie case of obviousness as to the proposed modification.

The Examiner's assertion that "the described Event Monitor enables monitoring of voice and data circuits that correspond to computer environments" mischaracterizes the teachings of Ditmer as they relate to the claimed invention. As claimed, "[the] filter representing a set of the one or more computer environments." However, the Examiner has not shown that the Event Monitor of Ditmer uses a filter representing the voice and/or data circuit as a set. Thus, Appellants' maintain that the Examiner has mischaracterized the teachings of Ditmer.

As to the asserted rationale to modify Wilson in view of Ditmer, the Examiner asserted the following on page 6 of the Third Office Action:

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide, in response to the receiving step, a means for filtering the one or more events using the filter, wherein the filter is received from, and the one or more filtered events are displayed on, a single display window, as taught by Ditmer et al., in the method of Wilson et al., so as to provide the users with specific events based on filters defined by the users, thereby displaying focused event information in a single workstation window.

In response, Appellants note that the Examiner's asserted rationale for the combination (i.e., "to provide the users with specific events based on filter defined by the users") does not necessarily result from the proposed combination. Specifically, the Examiner's asserted rationale (i.e., "to provide the users with specific events based on filter defined by the users") can be accomplished regardless of whether or not "the filter is received from, and the one or more filtered events are displayed on, a single display window." Thus, the Examiner's proposed rationale would not have impelled one having ordinary skill in the art to modify Wilson in view of Ditmer in the manner suggested by the Examiner.

The Examiner's Response

In first full paragraph on page 15 of the Second Office Action, the Examiner responded as follows:

Finally the applicants' argument that the motivation to combine the cited references does not necessarily result from the proposed combination; the examiner needed the combination with Ditmer et al. only to show "a single display window" feature of claim 1. The Wilson et al. reference, although implied this feature, did not specifically mention it. So, the examiner used the Ditmer et al. reference that clearly states using a single workstation.

The Examiner's assertion that "the examiner needed the combination with Ditmer et al. only to show 'a single display window feature of claim' stands in stark contrast to the Examiner's assertion's in the paragraph spanning pages 4 and 5 of the Second Office Action in which the Examiner asserted the following:

However, Wilson et al. do not explicitly disclose that in response to the receiving step, filtering the one or more events using the filter, wherein the filter is received from, and the one or more filtered events are displayed on a single display window; and displaying a link from a first

1 set of information related to the filtered one or more events being displayed, said link for
2 accessing a second set of information related to the first set of information.
3

4 The Examiner later relied upon Ditmer, in the first and second full paragraphs on page 5
5 of the Second Office Action to teach these limitations. As such, the Examiner appears to be
6 presenting two very different versions as to what the Examiner is relying upon Ditmer to teach.
7 As such, the Examiner has failed to clearly characterize the scope and content of the teachings of
8 the applied prior art.
9

10 Notwithstanding the Examiner's confusing statements as to what Ditmer is being relied
11 upon to teach, the Examiner has not responded to the thrust of Appellants' arguments. Simply
12 put, the Examiner's alleged motivation would not have realistically impelled one having ordinary
13 skill in the art to modify Wilson in view of Ditmer to arrive at the proposed combination, and
14 this argument has not been rebutted by the Examiner.
15

16 Conclusion

17 Based upon the foregoing, Appellants respectfully submit that the Examiner's rejection
18 under 35 U.S.C. § 103 based upon the applied prior art is not viable. Appellants, therefore,
19 respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 103.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: July 28, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. A method of filtering one or more events associated with one or more computer environments for display in a performance monitoring system, wherein each of the one or more events is generated when a threshold associated with a first parameter is met, the method comprising the steps of:

receiving a filter representing a set of the one or more computer environments;
in response to the receiving step, filtering the one or more events using the filter;
displaying the filtered one or more events; and

displaying a link from a first set of information related to the filtered one or more events being displayed, said link for accessing a second set of information related to the first set of information; wherein

the filter is received from, and the one or more filtered events are displayed on, a single display window.

4. A method as claimed in claim 1, wherein for each of the filtered one or more events, the displaying step further comprises the step of displaying a first set of information associated with:

an event identifier;
the associated one or more computer environments;
the first parameter;
the second parameter; and
a second parameter identifier.

6. A method as claimed in claim 1, wherein the second set of information comprises information associated with the configuration of the one or more computer environments.

7. A method as claimed in claim 1, wherein the second set of information comprises information associated with the threshold.

8. A method as claimed in claim 1, wherein the first parameter represents a severity level.

9. A method as claimed in claim 1, further comprising the steps of:
receiving a second filter representing at least one second parameter,
filtering the one or more events using the second filter in response to the receiving the second filter step, wherein
the second parameter represents a resource.

10. A method as claimed in claim 1, further comprising the steps of:
receiving a second filter representing at least one second parameter,
filtering the one or more events using the second filter in response to the receiving the second filter step,
wherein the second parameter represents a time.

11. A method as claimed in claim 1, wherein each of the one or more computer environments comprises at least one computer system.

12. An apparatus for filtering one or more events associated with one or more computer environments for display in a performance monitoring system, wherein each of the one or more events is generated when a threshold associated with a first parameter is met, the apparatus comprising:

means for receiving a filter representing a set of the one or more computer environments;

means, responsive to the receiving means, for filtering the one or more events using the filter;

means for displaying the filtered one or more events; and

means for displaying a link from a first set of information related to the filtered one or more events being displayed, said link for accessing a second set of information related to the first set of information; wherein

the filter is received from, and the one or more filtered events are displayed on, a single display window.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.